

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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**STURGIS MOTORCYCLE RALLY, INC.,**

**Civil File No.: 11-cv-5052-JLV**

**Plaintiff,**

**v.**

**RUSHMORE PHOTO & GIFTS, INC.,  
JRE, INC., CAROL NIEMANN,  
PAUL A. NIEMANN, BRIAN M.  
NIEMANN, and WAL-MART STORES,  
INC.**

**Defendants.**

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
REGARDING SECONDARY MEANING**

Defendants Rushmore Photo & Gifts, Inc., JRE, Inc., Carol Niemann, Paul A. Niemann, Brian M. Niemann, and Wal-Mart Stores, Inc. (collectively, "Defendants") move, pursuant to Fed. R. Civ. P. 56 and L.R. 56.1, for an Order dismissing with prejudice all of Plaintiff Sturgis Motorcycle Rally, Inc.'s ("SMRI") claims in its First Amended Complaint. In particular, Defendants move for an Order holding, as a matter of law, that: (a) SMRI is not entitled to any presumption of secondary meaning on the Sturgis Registration (Reg. No. 3,923,284); (b) the Sturgis Registration (Reg. No. 3,923,284) and all of SMRI's other asserted "Sturgis" marks are invalid for being descriptive with the lack of the requisite secondary meaning; (c) the Sturgis Registration (Reg. No. 3,923,284) be canceled based on invalidity, (d) none of the Defendants infringe any of SMRI's alleged "Sturgis" marks because they are invalid, and (e) all of SMRI's claims be dismissed with prejudice. Judgment should then be entered against all of SMRI's claims.

The grounds for this motion are set forth and supported in the accompanying memorandum of law, Defendants' Statement of Material and Uncontroverted Facts, and the arguments of counsel, and all of the files, records and proceedings in this matter, including, but not limited to, the Magistrate's Report (Doc. No. 107) and the Court's Order (Doc. No. 113).

Respectfully Submitted,

Dated: November 13, 2013

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify on November 13, 2013, a true and correct copy of **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT REGARDING SECONDARY MEANING** was served electronically through the CM/ECF system upon the following individuals:

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